



Love Letters © Bruce Helander (a client of the Firm) and The Parker Group

KENT, BEATTY & GORDON, LLP

ATTORNEYS AT LAW

ELEVEN TIMES SQUARE

NEW YORK, NY 10036

PHONE: (212) 421-4300 FAX: (212) 421-4303

WWW.KBG-LAW.COM

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4/9/2021

MEMO ENDORSED

April 7, 2021

VIA ECF

The Honorable Valerie E. Caproni
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Application GRANTED.

SO ORDERED.

Valerie Caproni
4/9/2021

Re: *TIAA v. Malafa*, 21-CV-2935-VEC

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE

Dear Judge Caproni:

We represent Plaintiff Teachers Insurance & Annuity Association of America ("TIAA"). Pursuant to Your Honor's Individual Practices, we write to request permission to file under seal two exhibits related to the Plaintiff's Proposed Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order. Those exhibits are:

- An email from a TIAA client to defendant Malafa's former TIAA email address (Declaration of Kenneth Bane dated April 6, 2021 ("Bane Decl.") Ex. C); and
- An email from defendant Malafa to another TIAA client (Bane Decl. Ex. E).

We request that undredacted versions of these exhibits be filed under seal in order to protect the private information of TIAA's clients. We will publicly file redacted versions of these exhibits.

While a presumption of public access applies to judicial documents, *e.g.*, documents relevant to the performance of the judicial function and useful in the judicial process, the weight of the presumption is "governed by the role of the material at issue" and the resulting value of such information to the public. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). Courts must also balance against the weight of the presumption any countervailing factors, such as "the privacy interests of those resisting disclosure" including "the degree to which the subject matter is traditionally considered private rather than public" and the "nature and degree of injury" resulting from disclosure. *See Lugosch*, 435 F.3d at 120. Here, TIAA's client information is not just private but a trade secret, *see ExpertConnect, L.L.C. v. Fowler*, 2019 WL 3004161, at *5 (S.D.N.Y. July 10, 2019), and we submit that these limited redactions are appropriate.

Respectfully submitted,

Jack A. Gordon
Jack A. Gordon

Jack A. Gordon
jag@kgb-law.com
NY & NJ Bars